

In the United States  
**COURT OF APPEALS**  
for the Ninth Circuit

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RECONSTRUCTION FINANCE CORPORATION,  
a corporation,

*Appellant,*

vs.

SPOKANE, PORTLAND AND SEATTLE RAIL-  
WAY COMPANY, a corporation,

*Appellee.*

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**PETITION OF APPELLANT FOR REHEARING**

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Upon Appeal from the United States District Court for  
the District of Oregon.

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To the Court of Appeals and the Judges Thereof:

Comes now Reconstruction Finance Corporation, the  
appellant in the above entitled cause and presents this,  
its petition, for a rehearing of the above entitled cause,  
and, in support thereof, respectfully shows:

I.

Though it is held that the evidence in this case was  
insufficient for a finding that Item 1563 (in-bond) cov-

ers all shipments upon which the alcohol tax has not been paid, and also all alcohol upon which no tax is required to be paid, it would not necessarily follow that the evidence was sufficient to require a finding that the alcohol herein involved was not "in-bond" within the sense of Item 1563 (Tr. of Rec. p. 17 and p. 22).

The District Court found that the alcohol in suit was tax-free alcohol owned by Defense Supplies Corporation and Reconstruction Finance Corporation, each of which are instrumentalities of the United States, and such alcohol was not alcohol in bond within the meaning of Item 1563, etc. \* \* \*. In the pre-trial order it was stipulated that the applicable rate was subject to land grant deductions and therefore by necessary implication the ownership of the alcohol must be in the United States Government (Tr. of Rec. p. 17 and p. 22).

Hence, the alcohol in suit is readily distinguishable with reference to the term "in-bond" from all alcohol otherwise owned and tax-free. For the bond contemplated by the term "in-bond" in the tariff is a bond given to the United States Government to secure the payment of a tax, which tax is payable to the United States. So that the characteristics of shipments of tax-free alcohol owned by the United States and transported from one of its agencies to another as a commodity appears to be identical with alcohol privately owned and transported in-bond except for the doing of what seems a vain or useless, if not impossible thing, the giving of a bond from the Shipper to itself.

“It is an accepted canon of construction that a statute is not to be construed as requiring a vain thing.”

Lawrence Warehouse Co. v. Defense Supplies Corporation, 168 F. (2d) 199 at 209.

50 Am. Jur. (Statutes) Sec. 377.

State v. Gates, 104 Or. 112, 206 P. 863 at 866.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the District Court be upon further consideration reversed.

Respectfully submitted,

DEWEY H. PALMER,

Counsel for Appellant.

#### CERTIFICATE OF COUNSEL

I, counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

DEWEY H. PALMER,

Counsel for Appellant.